



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2004

Mr. Walter Ehresman  
Assistant General Counsel  
Texas Workers' Compensation Commission  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744-1609

OR2004-6624

Dear Mr. Ehresman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206485.

The Texas Workers' Compensation Commission (the "commission") received a request for all documents from January 1, 2000, to the present, concerning a specific company. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 411.034 of the Texas Labor Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected under section 411.034(a) of the Texas Labor Code, which provides:

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<sup>1</sup>We note that you have redacted portions of the submitted information prior to submitting such information for our review. Section 552.301 of the Government Code requires a governmental body to submit responsive information in a manner that permits this office to review the information. *See* Gov't Code § 552.301(e)(1)(D). Therefore, the commission risks non-compliance with section 552.301 if it fails to submit responsive documents in non-redacted form. Such non-compliance can result in a conclusion from this office that the information at issue must be released. *See* Gov't Code §§ 552.006, .301, .302. We accordingly advise that with respect to any future requests for an open records decision from this office, the commission should submit any responsive documents in non-redacted form. *See also id.* § 552.3035 (attorney general may not disclose to requestor or public any information submitted to attorney general under section 552.301(e)(1)(D)).

(a) The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system.

Texas Labor Code § 411.034(a). Section 411.032 provides:

(a) an employer shall file with the commission a report of each:

(1) on-the-job injury that results in the employee's absence from work for more than one day; and

(2) occupational disease of which the employer has knowledge.

Texas Labor Code § 411.032(a). You state that the submitted information was collected by the commission pursuant to section 411.032 of the Labor Code. Based on our review of your arguments and the submitted information, we determine that the identities of the employees in the submitted reports are confidential under section 411.034 of the Labor Code. In this case, we have marked the identifying information which must be withheld under section 552.101 of the Government Code in conjunction with section 411.034 of the Labor Code. *See* Open Records Decision No. 619 (1993) at 4-5. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. David Floyd  
Assistant Attorney General  
Open Records Division

WDF/sdk

Ref: ID# 206485

Enc. Submitted documents

c: Mr. Steve Couch  
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(w/o enclosures)